



# Department of Defense DIRECTIVE

NUMBER 5400.7

September 29, 1997

ASD(PA)

SUBJECT: DoD Freedom of Information Act (FOIA) Program

- References:
- (a) DoD Directive 5400.7, "DoD Freedom of Information Act Program," September 9, 1997 (hereby canceled)
  - (b) Section 552 of title 5, United States Code, as amended, "Freedom of Information Act"
  - (c) DoD 5025.1-M, "DoD Directives System Procedures," August 1994, authorized by DoD Directive 5025.1, June 24, 1994
  - (d) DoD 5400.7-R, "DoD Freedom of Information Act Program," May 22, 1997, authorized by this Directive
  - (e) through (i), see enclosure 1

## 1. REISSUANCE AND PURPOSE

This Directive:

- 1.1. Reissues reference (a) to update policies and responsibilities for the implementation of the DoD FOIA Program under reference (b).
- 1.2. Continues to authorize, consistent with reference (c), the publication of reference (d), the single DoD Regulation on the FOIA Program.
- 1.3. Continues to delegate authorities and responsibilities for the effective administration of the FOIA program.

## 2. APPLICABILITY AND SCOPE

- 2.1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant

Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as “the DoD Components”).

2.2. National Security Agency/Central Security Service records are subject to this Directive unless the records are exempt under Section 6 of Pub. L. 86-36 (1959), codified at Section 402 of 50 U.S.C. note (reference (e)). The records of the Defense Intelligence Agency, National Reconnaissance Office, and the National Imagery and Mapping Agency are also subject to this Directive unless the records are exempt under Section 424 of 10 U.S.C. (reference (f)).

### 3. POLICY

It is DoD policy to:

3.1. Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with DoD responsibility to ensure national security.

3.2. Allow a requester to obtain agency records from the Department of Defense that are available through other public information services without invoking the FOIA.

3.3. Make available, under the procedures established by DoD 5400.7-R (reference (d)), those agency records that are requested by a member of the general public who explicitly or implicitly cites the FOIA.

3.4. Answer promptly all other requests for information, agency records, objects, and articles under established procedures and practices.

3.5. Release agency records to the public unless those records are exempt from mandatory disclosure as outlined in Section 552 of 5 U.S.C. (reference (b)). Make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption.

3.6. Process requests by individuals for access to records about themselves contained in a Privacy Act system of records under procedures set forth in DoD 5400.11-R (reference (g)), and procedures outlined in this Directive as amplified by reference (d).

#### 4. RESPONSIBILITIES

##### 4.1. The Assistant Secretary of Defense for Public Affairs shall:

4.1.1. Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

4.1.2. Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

4.1.3. Internally administer the FOIA Program for OSD, the Chairman of the Joint Chiefs of Staff and, as an exception to DoD Directive 5100.3 (reference (h)), the Combatant Commands.

4.1.4. As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, and the DoD Field Activities.

4.2. The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this Directive.

##### 4.3. The Heads of the DoD Components shall:

4.3.1. Publish in the “FEDERAL REGISTER” any instructions necessary for the internal administration of this Directive within a DoD Component that are not prescribed by this Directive or by other issuances of the Assistant Secretary of Defense (Public Affairs). For the guidance of the public, the information specified in Section 552(a)(1) of 5 U.S.C. (reference (b)) shall be published in accordance with DoD Directive 5400.9 (reference (i)).

4.3.2. Conduct training on the provisions of this Directive, reference (b), and DoD 5400.7-R (reference (d)) for officials and employees who implement the FOIA.

4.3.3. Submit the report prescribed in Chapter 7 of reference (d).

4.3.4. Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the “FEDERAL

REGISTER,” the records specified in Section 552(a)(2) of reference (b), unless such records are published and copies are offered for sale. These records shall be made available to the public in hard copy, by computer telecommunications, or other electronic means.

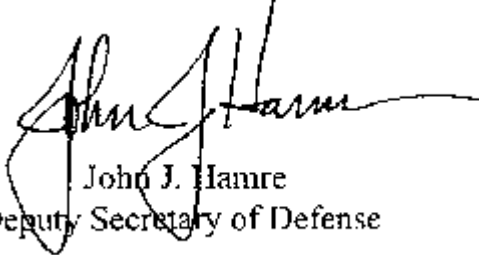
4.3.5. Maintain and make available for public inspection and copying current indices of all (a)(2) records as required by section 552(a)(2) of reference (b).

## 5. INFORMATION REQUIREMENTS

The reporting requirements in Chapter 7 of reference (d) have been assigned Report Control Symbol DD-PA(A)1365.

## 6. EFFECTIVE DATE

This Directive is effective immediately.



John J. Hamre  
Deputy Secretary of Defense

Enclosures - 1

1. References

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 6 of Public Law 86-36, codified at Section 402 of title 50, United States Code, note, "National Security Agency Act of 1959"
- (f) Section 424 of title 10, United States Code, "Disclosure of Organizational and Personnel Information: Exemption for Defense Intelligence Agency, National Reconnaissance Office and National Imagery and Mapping Agency"
- (g) DoD 5400.11-R, "Department of Defense Privacy Program," August 31, 1983, authorized by DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982
- (h) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Commands," November 1, 1988
- (i) DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public," December 23, 1974